

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

30269

**FILE:** B-217290

**DATE:** January 23, 1985

**MATTER OF:** ATD-American Co.

**DIGEST:**

1. Bid on total small business set-aside from a small business concern which indicates that not all supplies to be furnished will be the product of a small business concern properly is rejected as nonresponsive because bidder would be free to furnish supplies from a large business and thus defeat the purpose of the set-aside.
2. Responsiveness must be determined from material available at bid opening and postopening explanations cannot be considered to correct a nonresponsive bid.

ATD-American Co. (ATD) protests the rejection of its bid as nonresponsive under Defense Personnel Support Center, Defense Logistics Agency (DLA), invitation for bids (IFB) No. DLA100-84-B-1021, a total small business set-aside for the purchase of cloth. The company's bid was rejected because in it ATD indicated that not all supplies to be furnished would be manufactured by a small business concern in the United States, its possessions, or Puerto Rico.

We deny the protest summarily. We do so without obtaining a report from the contracting agency, since it is clear from the information furnished by ATD that the protest is without legal merit. Basic Marine, Inc., B-215236, June 5, 1984, 84-1 C.P.D. ¶ 603.

The solicitation contained the usual Small Business Concern Representation. ATD indicated in that Representation that it was a small business concern, but that "not all supplies to be furnished will be manufactured or produced by

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a small business concern in the United States, its possessions, or Puerto Rico." As a result, the contracting officer rejected the bid as nonresponsive.<sup>1/</sup>

ATD states that it completed the Representation as it did because it read the words "all supplies" to mean the components which would be purchased to complete the contract. It states the first of these components is the base cloth or "greige goods," most of which is supplied by large businesses. The second component is the finishing--here, dyeing and laminating--of the greige goods into the finished fabric. ATD states that the finisher, ATD's first-tier subcontractor, is a small business concern. ATD explains that although both it and its first-tier subcontractor are small business concerns, in recognition of the fact that the greige goods probably would be the product of a large business, it checked the box in the solicitation indicating that "not all supplies to be furnished will be manufactured or produced by a small business concern . . . ." ATD thus contends that the solicitation provision is inherently ambiguous, and such ambiguity should be resolved in its favor to permit award of the contract to ATD.

Where a bid on a total small business set-aside fails to establish the legal obligation of the bidder to furnish supplies manufactured or produced by small business concerns, the bid is nonresponsive and must be rejected, DuHadaway Tool and Die Shop, Inc., B-216082, Aug. 29, 1984, 84-2 C.P.D. ¶ 239, because a small business contractor would be free to provide the supplies from either small or large business manufacturers as its private business interests might dictate, thus defeating the intent of the set-aside program. Parco, A Division of Blue Mountain Products, Inc., B-211016, Mar. 28, 1983, 83-1 C.P.D. ¶ 318.

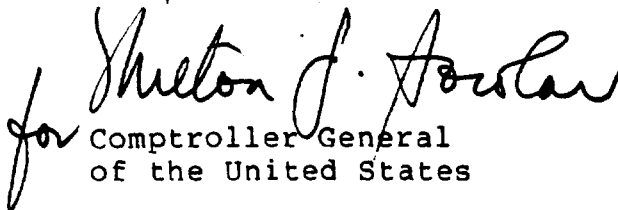
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<sup>1/</sup> While we have held that the failure to complete the small business size status portion of the Representation is a waivable minor informality, we have distinguished this from the second portion of the Representation as to whether or not all supplies to be furnished will be manufactured or produced by a small business concern which is a matter of bid responsiveness. See Extinguisher Service, Inc., B-214354, June 14, 1984, 84-1 C.P.D. ¶ 629.

Here, even though ATD indicated in its bid that it was a small business concern, it also represented that not all the supplies it furnished would be the products of a small business concern. In so doing ATD misconstrued the Representation's requirement in reasoning that "supplies" to be furnished under the contract included greige goods, a component of the finished fabric deliverable under the contract. While ATD's explanation is credible, we may not allow such a postopening explanation to correct a nonresponsive bid. In a similar case, Wippette International Incorporated, B-216304, Sept. 18, 1984, 84-2 C.P.D. ¶ 322, we held that a bid from a small business manufacturer whose Representation was completed as was the protester's here properly was rejected because the "bid as submitted did not legally obligate the firm to furnish a small business product." And, in Basic Marine, Inc., *supra*, we stated that the responsiveness of a bid must be determined from the material available at bid opening and postopening explanations cannot be considered to correct a nonresponsive bid, even if a lower price could be obtained by accepting the corrected bid.

Accordingly, since ATD's intent was not clearly ascertainable from the face of the bid, the contracting officer acted reasonably in rejecting the bid as nonresponsive. See Mechanical Mirror Works, Inc., B-210750.2, Oct. 20, 1983, 83-2 C.P.D. ¶ 467.

The protest is summarily denied.

*for*   
Comptroller General  
of the United States